
INTERIOR BOARD OF INDIAN APPEALS

Estate of Carrie Standing Haddon Miller

10 IBIA 128 (10/05/1982)

# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203


## ESTATE OF CARRIE STANDING HADDON MILLER

IBIA 81-33 Decided October 5, 1982

Appeal from order by Administrative Law Judge Keith L. Burrowes denying petition for rehearing. (IP TU 183P 79).

Affirmed.

1. Indian Probate: Wills: Testamentary Capacity: Generally

   The burden of proving lack of testamentary capacity is on those contesting the will.

2. Indian Probate: Wills: Unnatural Will

   A will is not unnatural even when it leaves only a life estate to testatrix's son when the testamentary scheme is a reasonable response to the desires of the testatrix.

3. Indian Probate: Wills: Undue Influence

   To invalidate an Indian will because of undue influence upon a testator, it must be shown: (1) that he was susceptible of being dominated by another; (2) that the person allegedly influencing him in the execution of the will was capable of controlling his mind and actions; (3) that such person did exert influence upon the decedent of a nature calculated to induce or coerce him to make a will contrary to his own desires; and (4) that the will is contrary to the decedent's own desires.

4. Indian Probate: Wills: State Law: Applicability to Indian Probate

The execution of an Indian will is controlled by 25 U.S.C. § 373 (1976) and regulations published in 43 CFR 4.260-.262, not by state law.

5. Indian Probate: Wills: Publication

There is no requirement in 43 CFR 4.260 that the testatrix publish her will by declaring to the witnesses that it is her last will and testament or that she be the person who requests the witnesses to sign.

6. Indian Probate: Wills: Generally

43 CFR 4.260(b) does not require that all Indian wills be submitted to the agency superintendent and examined by the office of the Solicitor.

APPEARANCES: Oliver E. Davis, Esq., for appellant Roxie Haddon; Justus Hefley, Esq., for appellees Elmer Raye Smith, Richenda Vaughan, and Newton LaMar. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE MUSKRAT

Roxie Haddon, appellant, has sought review of a March 2, 1981, order denying petition for rehearing in the probate of the estate of Carrie Standing Haddon Miller, a deceased unallotted Wichita of the Anadarko Agency in Oklahoma. The denial of rehearing left standing a December 17, 1980, order approving will and decree of distribution. For the reasons discussed below, the order approving testatrix's will is affirmed.

Background

Carrie Standing Haddon Miller (testatrix), was born on October 30, 1908, and died on July 18, 1978, following a lengthy stay in the Silvercrest Nursing Home in Anadarko, Oklahoma. Testatrix had suffered a severe stroke in 1972 that left her partially paralyzed on one side. She lived for a period of time with her only son and daughter-in-law, David and Roxie Haddon, before her condition necessitated hospitalization and nursing home care. From 1972 until the time of her death, she suffered from diabetes and had several smaller strokes that left her increasingly debilitated and at times emotionally unstable to the point where she would frequently begin crying when she attempted to speak with nursing home personnel or visitors.

Upon testatrix's death, a document purported to be her last will and testament, dated August 6, 1976, was sought to be admitted to probate. A hearing to determine family relationships was held on June 19, 1979, by Administrative Law Judge Vernon J. Rausch. Because there was a challenge to the will, a second hearing vas held by Administrative Law Judge Keith L. Burrowes on April 2, 1980, to inquire into the facts and circumstances surrounding the making and execution of the document.

Under the terms of the will, testatrix devised her interest in Wichita allotment number 354 to her half brother, Elmer Raye Smith, and her interests in allotment numbers 352, 443, and 479 1/ to her half sister, Richenda Vaughan. Testatrix devised a life estate in allotment number 663 to her son. The remainder interest in this allotment was devised to Newton LaMar, a collateral relative of the woman from whom testatrix had inherited her interest in the allotment. The rest and residue of her estate was devised to her heirs at law. 2/

On October 23, 1979, David Haddon died, leaving as his sole heir his widow, Roxie Haddon.

On December 17, 1980, Administrative Law Judge Burrowes issued an opinion finding that testatrix had testamentary capacity at the time her will was executed, the will was properly executed, and the will was not unnatural or the product of undue influence. Consequently, he approved the will and decreed distribution of the estate according to its terms.

On February 11, 1981, appellant, as the heir of David Haddon, filed a petition for rehearing with Judge Burrowes. That petition was denied on March 2, 1981. On April 23, 1981, appellant filed an appeal with the Board. Briefs have been submitted by both parties.

## Contentions on Appeal

On appeal before the Board, appellant contends that: (1) The testatrix lacked testamentary capacity; (2) the will itself is unnatural and a product of undue influence; (3) the will was not executed with the requisite formality; and (4) the will was not reviewed by the Office of the Solicitor as stipulated in 43 CFR 4.260(b).

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1/ The will lists this as Allotment No. 825. The Administrative Law Judge found that the description of the property identified allotment No. 479, which was found on page 825 of the Wichita-Caddo allotment book. Discussion, Findings of Fact and Conclusions of Law (hereinafter "Decision"), Dec. 17, 1980, at 2.

2/ These devises had the following estimated values: to Elmer Raye Smith, $18,333.33; to Richenda Vaughan, $29,840.84; to David Haddon, a life estate in property valued at $74,250; to Newton LaMar, a remainder interest in property valued at $74,250; and to her heirs at law, $3,908.65. See Decision at 1; Inventory and Appraisement of testatrix's trust estate.

Discussion and Conclusions

[1] The burden of proving that testatrix lacked testamentary capacity is on those contesting the will in Indian probate hearings. Estate of Asmakt Yumpquitat (Millie Sampson), 8 IBIA 1, 5 (1980). Appellant's contention that Testatrix lacked testamentary capacity is based on the fact that testatrix was admittedly physically disabled and at times emotionally unstable. The Board has repeatedly held that the fact that a testator is aged, ill, physically disabled, and sometimes forgetful is not sufficient to support a finding of lack of testamentary capacity. See, e.g., Estate of Catalina Clifford, 9 IBIA 165 (1982); Estate of Jane Eckiwaudah, a.k.a. Emma Chahsenah, 9 IBIA 112 (1981); Estate of Asmakt Yumpquitat, supra.

The witnesses to testatrix's will were employees of the nursing home in which she was confined. One witness died before the hearing in this estate. The remaining witness confirmed that testatrix was in failing physical health and experienced frequent periods of emotional depression marked by crying spells. Although the witness had never discussed testatrix's affairs with her, she testified that when the will was executed testatrix appeared to be competent and to understand what was being said when the will was read to her. In opposition to this testimony, appellant's only evidence concerns testatrix's general physical and emotional condition. Such evidence is insufficient to sustain appellant's burden of proving that testatrix lacked testamentary capacity. 3/

Appellant next argues that the will is unnatural because it in effect disinherits testatrix's only child. This unnatural disposition is alleged to be the result of undue influence exercised on testatrix by some or all of the appellees.

The will leaves a life estate in property valued at $74,250 to testatrix's son. This disposition "disinherits" the son only because he died shortly after his mother's death, and so received little benefit from the devise. In addition, as his mother's sole heir-at-law, David Haddon received all of the residue of her estate, including interests in trust allotments valued at $3,908.65. Although this inheritance is not large, it cannot be maintained that testatrix disinherited her only child.

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3/ Both parties mention a gift of $14,000 made by testatrix to her son on Aug. 12, 1976, and a conservatorship granted to Elmer Raye Smith over testatrix on Nov. 29, 1976, in their comments on her testamentary capacity. Appellees suggest that the fact that appellant argues that testatrix was not competent to execute a will on Aug. 6, 1976, but was competent to give her son $14,000 on Aug. 12, 1976, is, at least, curious. Testatrix's competence on either Aug. 12 or Nov. 29, 1976, is not dispositive of the question of whether she had the capacity to execute a will on Aug. 6, 1976.

[2] There was conflicting testimony, which is summarized in the Administrative Law Judge's decision at page 4, as to what testatrix desired to do with the property she eventually divided between her son and Newton LaMar. There was evidence that she wished to leave everything to her son; there was also evidence that she felt this particular property, which had come to her from the LaMar family because of a marital relationship, should be returned to the LaMars. Other evidence indicates that the relationship between testatrix and appellant was not good. This evidence presents a reasonable explanation for the testamentary scheme chosen. Although the scheme may be different from what another might have devised, it is not so unnatural as to warrant denial of probate. See Tooahnippah v. Hickel, 397 U.S. 598 (1970).

[3] Appellant contends that this testamentary scheme was the result of undue influence.

> To invalidate [an Indian] will because of undue influence upon a testator, it must be shown: (1) that he was susceptible of being dominated by another; (2) that the person allegedly influencing him in the execution of the will was capable of controlling his mind and actions; (3) that such person did exert influence upon the decedent of a nature calculated to induce or coerce him to make a will contrary to his own desires; and (4) that the will is contrary to the decedent's own desires.

Estate of William Cecil Robedeaux, 1 IBIA 106, 126, 78 I.D. 234, 244 (1971).

Appellant presented evidence that testatrix at one time thought her property should go to her son, that appellees or some of them urged testatrix to prepare a will and contacted a lawyer for that purpose, and that testatrix may have been susceptible to influence. This evidence falls short of proving the enumerated requirements for denying probate because of undue influence.

[4] Appellant's contention that the will was not executed with the requisite formality appears to be based on the misconception that the execution of an Indian will disposing of trust property is controlled by state law. As the Administrative Law Judge correctly pointed out in his decision at page 1, the execution of such wills is controlled by 25 U.S.C. § 373 (1976) and regulations published in 43 CFR 4.260-.262. Blanset v. Cardin, 256 U.S. 319 (1921).

[5] Appellant argues that the will was not executed with the proper formalities as set forth in state law. Under 43 CFR 4.260(a), an Indian will, must only be "executed in writing and attested by two disinterested adult witnesses." There is no requirement that the testatrix publish the will by declaring to the witnesses that it is her last will and testament or that she be the person who requests the witnesses to sign. See Estate of Hiemstennie (Maggie) Whiz Abbott, 4 IBIA 12, 21, 82 I.D. 169, 172 (1975); Robedeaux, supra, 1 IBIA at 118-19, 78 I.D. at 240.

[6] Appellant's final contention is that the will was not submitted to the agency superintendent and examined by the Office of the Solicitor as is required by 43 CFR 4.260(b). This contention involves a misreading of that regulation. Section 4.260(b) establishes a procedure whereby an Indian can, in effect, obtain an evaluation of a will before his or her death. The regulation does not require that all wills be so submitted and examined.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, and for the reasons discussed above, the March 2, 1981, order approving will and decree of distribution in this estate is affirmed. This decision is final for the Department.

//original signed
Jerry Muskrat
Administrative Judge

We concur:

//original signed
Franklin D. Arness
Administrative Judge

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Wm. Philip Horton
Chief Administrative Judge